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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

UNITED STATES OF AMERICA PLAINIFF  
VERSUS CIVIL ACTION NO. 3:16-CV-00489-CWR-BWR  
THE HINDS COUNTY BOARD OF SUPERVISORS,  
HINDS COUNTY SHERIFF, ET AL. DEFENDANTS

MOTIONS PROCEEDINGS  
BEFORE THE HONORABLE CARLTON W. REEVES,  
UNITED STATES DISTRICT COURT JUDGE,  
NOVEMBER 28, 2022,  
JACKSON, MISSISSIPPI

(Appearances noted herein.)

REPORTED BY:

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**APPEARANCES VIA VIDEOCONFERENCE:**

FOR THE PLAINTIFF:

CHRISTOPHER N. CHENG, ESQ.  
LAURA L. COWALL, ESQ.  
HELEN VERA, ESQ.  
MITZI DEASE-PAIGE, ESQ.  
ANGELA GIVENS WILLIAMS, ESQ.

FOR THE DEFENDANTS:

JAMES W. SHELSON, ESQ.  
NICHOLAS F. MORISANI, ESQ.  
TONY R. GAYLOR, ESQ.  
RAYFORD G. CHAMBERS, ESQ.  
JOHN C. HALL, II, ESQ.

ALSO PRESENT:

CREDELL CALHOUN  
SHERIFF TYREE JONES  
ANTHONY NJOKU  
DAVE PARRISH

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2  
3           THE COURT: Good afternoon.

4           Can everyone hear me, first of all? Okay. I see you  
5           nodding your heads. Let me take a roll call.

6           Who do I have for the United States?

7           MS. VERA: Good afternoon, Your Honor. This is Helen  
8           Vera for the United States, and with me from the civil rights  
9           division are Laura Cowall; Christopher Cheng; and our  
10          paralegal, Anthony Njoku; and from the U.S. Attorney's Office  
11          Angela Givens Williams and Mitzi Dease-Paige.

12          THE COURT: All right. Thank you.

13          And who do I have for Hinds County?

14          MR. MORISANI: Good afternoon, Your Honor. You have  
15          Nick Morisani and Jim Shelson from Phelps Dunbar, and with us  
16          are Tony Gaylor and board president Credell Calhoun. And  
17          Attorney Ray Chambers as well, sir.

18          THE COURT: Okay.

19          MR. MORISANI: And Sheriff Tyree Jones is on as well.

20          MR. JONES: Sheriff Tyree Jones. I'm on here as well.  
21          Thank you.

22          THE COURT: All right.

23          MR. HALL: Good afternoon, Your Honor. John Hall for  
24          the sheriff's department. I'm traveling, Your Honor, so my  
25          reception is kind of spotty.

1           THE COURT: Okay. I'll just -- would it be possible --  
2 I typically require people to be in a stationary position, so  
3 if you're going to speak on anything, you probably should be  
4 in a stationary position or -- well, if you drop off, just,  
5 you know, call back in, I guess.

6           Do we have any other participants?

7           All right. Well, thank you all for making yourselves  
8 available. Obviously we do have the court reporter here.

9           Now, I do not believe either the receiver or the  
10 monitors are on this call. If you are, please make sure you  
11 let the parties and the Court know.

12          All right. Again, thank you --

13          MR. PARRISH: Your Honor?

14          THE COURT: I'm sorry?

15          MR. PARRISH: Your Honor, this is David Parrish with  
16 the monitoring team. I may have misunderstood and I was not  
17 supposed to be here. I'll drop off if that's appropriate.

18          THE COURT: It's not required for you to be here.  
19 That's all. It's not required. We're not going to take any  
20 testimony or anything today.

21          MR. PARRISH: Okay.

22          THE COURT: All right.

23          MR. PARRISH: Thank you, sir.

24          THE COURT: Thank you, Mr. Parrish.

25          Is there anyone else? All right.

1           Thank you all for making yourselves available. We do  
2           have the court reporter who is present.

3           As the parties know and should understand, the Court is  
4           going to take up the various motions that have been filed.  
5           This was prompted initially by the County's urgent and  
6           necessitous motion. I realize it's been a few days since that  
7           motion was initially filed. Its the Court's practice to have  
8           it heard as expeditiously as possible, but I think it was  
9           filed at or near the time that the Court was out and during  
10          the -- was out of the office, and then of course we had the  
11          Thanksgiving break. So I put the parties on a track to have  
12          all briefing and stuff filed before today.

13          So the first thing I want to start with, though,  
14          because I think the parties received an e-mail or some type of  
15          correspondence or communication from this office that the  
16          parties should be prepared to address all the pending motions  
17          that have been filed. So I want to start first with the  
18          motion for clarification that the United States filed, and  
19          then I'll move to the United States' motion for  
20          reconsideration at Docket No. 220. I do believe that the bulk  
21          of our time, though, will be spent on the urgent and  
22          necessitous motion filed by the County.

23          So are we ready to proceed with the motion for  
24          clarification?

25          MS. VERA: Yes, Your Honor.

1           THE COURT: All right. And who will be arguing on  
2 behalf of the United States?

3           MS. VERA: I will, Your Honor.

4           THE COURT: Okay. I'll just ask all others to put your  
5 mikes on mute while this person is speaking; and when the  
6 County responds, everybody will reciprocate for the person  
7 who's speaking.

8           You may proceed, whoever that -- whoever will argue  
9 this for the United States. I thought it was Ms. Vera; right?

10          MS. VERA: Yeah, this is Ms. Vera.

11          THE COURT: All right. You may proceed.

12          MS. VERA: Thank you, Your Honor. May it please the  
13 Court? Helen Vera for the United States.

14          The United States has asked the Court to clarify that  
15 in issuing the receiver orders, the Court found that  
16 receivership was necessary to remedy contempt and ongoing  
17 constitutional violations and that the relief in the receiver  
18 orders is narrowly drawn, extends no further than necessary to  
19 correct the violation of the federal right, and is the least  
20 intrusive means necessary to correct the violation of the  
21 federal right and will not have an adverse impact on public  
22 safety or the operation of the criminal justice system.  
23 That's the language, Your Honor, from the PLRA. Criminal --

24          THE COURT: Is it the United States' position that that  
25 specific language must be in the order to make it a valid

1 order? Because I believe, I think, in reading the particular  
2 order, I imagine we touch on some portion of all those words  
3 in the order itself. They may not be stringed together in one  
4 sentence, but is this magic language that has to be used?

5 MS. VERA: That's right, Your Honor. It's our  
6 understanding that it's a requirement to include that  
7 quotation from the statute, and that's, you know, the United  
8 States' understanding, similar to how Your Honor just  
9 characterized the reasoning and the record that support the  
10 Court's decision and order -- orders. But we're seeking  
11 clarification that that magic language, as Your Honor put it,  
12 is part of those orders.

13 THE COURT: So the County says, well, that might be  
14 okay in some circumstances where the County contends that the  
15 Court has no jurisdiction; since they've appealed it --  
16 immediately appealed it, then this court can't touch its order  
17 in any way at this point in time. Could you go ahead and  
18 address that particular issue?

19 MS. VERA: Yes, Your Honor. Our rebuttal brief  
20 addressed that. The motion itself was filed before the appeal  
21 was docketed by the Court of Appeals, so it was proper to move  
22 for clarification as we did, but we recognize, of course, that  
23 that then -- the Court of Appeals docketed the appeal, and so  
24 now the way that the Court would make the 60(b) correction  
25 would be through an indicative ruling under Rule 62.1, which



1 allows the district court to issue an indicative ruling that,  
2 upon remand for this purpose, the Court would add that  
3 language to the order, and that's the procedurally how that  
4 would work given that the appeal has now been docketed.

5 THE COURT: Okay. And assuming the Court agrees with  
6 the County and says that it does not jurisdiction to do  
7 anything, I assume you all will take the appeal up on that --  
8 I mean with that being one of the many issues, but assuming  
9 the Fifth Circuit agrees -- well, I guess agrees with the  
10 County, I guess the Fifth Circuit can remand it to the Court  
11 to make that specific finding first and then allow the appeal  
12 to run or what?

13 MS. VERA: Well, what the United States thinks would be  
14 the cleanest approach, Your Honor, would be for the Court to  
15 take the Rule 62.1 indicative ruling route, explaining that --  
16 you know, and issuing a ruling indicating that the Court would  
17 take -- would address this issue and add that language to the  
18 order upon remand for that purpose and then the appeal could  
19 go back up to the Fifth Circuit.

20 THE COURT: Okay. All right. Is there anything else  
21 you'd like to say with respect to this motion Ms. Vera?

22 MS. VERA: Thank you, Your Honor. Just that the United  
23 States recognizes that the record supported the fact that the  
24 Court did make those findings and therefore, you know, we  
25 believe that Rule 60(b) via the indicative ruling procedure

1 provides an appropriate and efficient solution to that issue.

2 Thank you, Your Honor.

3 THE COURT: Okay. Thank you, Ms. Vera.

4 Who is arguing on behalf of the County and/or the  
5 sheriff?

6 MR. MORISANI: Good afternoon, Your Honor. Nick  
7 Morisani. I'll argue on behalf of the County and the sheriff  
8 for this motion.

9 THE COURT: Okay.

10 MR. MORISANI: And may it please the Court?

11 The -- Your Honor, the motion essentially attempts to  
12 tell the Court what it was thinking when it issued the  
13 receiver orders 215 and 216 on the docket. It then seeks to  
14 have the Court go back now that an appeal has been filed and  
15 make a conclusory statement which in their incorrect view, I  
16 think, will make the receiver order comply with the PLRA, and  
17 that's just not how the PLRA analysis works based on precedent  
18 that we cited in our response to their motion.

19 Now, we argued in our response -- I won't rehash it in  
20 detail, but we offered two primary grounds on which the Court  
21 could base denial of this motion. The first Your Honor  
22 pointed out earlier was we contend the Court does not have  
23 jurisdiction to grant the Rule 60(a) request at this point.  
24 It's not only a matter of jurisdiction once an appeal is  
25 filed, but it's also a matter of the plain terms of that rule,

1     which says once the appeal is docketed, that there's no  
2     question an order can't be entered; and then secondly, just on  
3     the merits, I think this was no mere technical error that we  
4     contend, and that's all that Rule 60(a) is intended to remedy  
5     are essentially scriveners' errors, and that's not what  
6     happened here, and so -- it's not what we contend happened  
7     here, I should say --

8             THE COURT: Mr. Morisani, you don't believe that this  
9     court intended through its order appointing receivership,  
10    appointing a receiver, setting forth the duties and  
11    responsibilities of the receiver and all of those things that  
12    were said that -- you know, that the -- both parties have  
13    disagreed with in some way because each has filed a notice of  
14    appeal, you don't believe the Court sought to appropriately  
15    find that a receivership was appropriate?

16            MR. MORISANI: Well, Your Honor, I think -- I trace it  
17    back to the order. It's order No. 204 on the docket where  
18    Your Honor found that there would be -- the Court found there  
19    would be a receiver appointed as the final sanction for  
20    contempt, and that order does not spell out the duties of the  
21    receivership, but it says the Court is going to appoint a  
22    receiver.

23            When you look forward to those orders pointing out the  
24    duties, that's prospective relief in the County's position.  
25    That's forward-looking relief, nonmonetary forward-looking

1 relief, and I think the PLRA provides that analysis for the  
2 County -- or any defendant's protection in that scenario, and  
3 it's not just, you know, a that this statement that matches  
4 the language of the statute. It's an analysis. Before we do  
5 this, are these provisions the least intrusive means? Are  
6 they narrowly provided just to remedy the actual violation,  
7 and then of course are they necessary to alleviate the  
8 violation? And so I think it's more than just a statement,  
9 Your Honor.

10 Now, whether or not the Court intended that, I don't  
11 know if that's really the position that we're taking. We're  
12 taking that the analysis had -- the legal analysis had to take  
13 place and it did not and therefore -- it's certainly not a  
14 mere clerical error. Under Rule --

15 THE COURT: What happens if the Fifth Circuit agrees  
16 with you, Mr. Morisani? Does the Fifth Circuit -- could the  
17 Fifth Circuit simply remand it to the Court for the Court to  
18 make that specific finding? I mean to write in the language  
19 that the County contends is specifically required by the  
20 statute?

21 MR. MORISANI: I guess two responses, Your Honor. One,  
22 I think it's ultimately up to the Fifth Circuit how they would  
23 handle a remand. That could be one way they do it. They  
24 could remand it for further findings. And I think the  
25 operative word there is "findings." Again, I don't think it's

1 just a mere statement that the Court would have to put in the  
2 order. I think it's findings that have to be made based on  
3 the record. So -- but I think at the end of the day,  
4 ultimately the Fifth Circuit would decide how they would  
5 remand it if they agreed.

6 THE COURT: Okay. I didn't mean to interrupt your  
7 train of thought. You can continue if you wish.

8 MR. MORISANI: The last thing I would add, Your Honor,  
9 is just there was talk of Rule 62.1, and the plaintiff  
10 certainly understands Rule 62.1 and knows about the rule.  
11 They filed another motion citing the rule. There was no Rule  
12 62.1 request in the motion to clarify, and that was raised for  
13 the first time in their rebuttal, Your Honor, and so we would  
14 think that would be completely inappropriate to take that  
15 route at this point with respect to the motion to clarify.

16 THE COURT: But anything on the motion to clarify, I  
17 believe it's the County's position that there is nothing to  
18 clarify because the Court has no jurisdiction. Whether you  
19 cite Rule 62.1, 60(b), 60(a), no rule allows this court to  
20 touch this case at this juncture.

21 MR. MORISANI: I think if the motion had been made  
22 under 62.1, perhaps I would look at it differently. I don't  
23 know. It wasn't made under that rule. But certainly under  
24 Rule 60(a), that would be our position, Your Honor.

25 THE COURT: Okay. All right. Thank you.

1 Ms. Vera, you do have the -- I'm sorry.

2 Are you through Mr. Morisani?

3 MR. MORISANI: Yes, sir.

4 THE COURT: Ms. Vera, you have the right to reply if  
5 you wish.

6 MS. VERA: Thank you, Your Honor.

7 Yes. Just to reiterate, you know, our response to the  
8 County's argument that seemed to suggest that it -- that the  
9 Court's reasoning supporting the receiver orders and doing the  
10 required analysis by going through the *Plata* factors and  
11 addressing the need-narrowness-intrusiveness standard through  
12 that analysis, you know, it's clear from the record that the  
13 Court did that in its prior orders. And so we're not  
14 presuming to say what the Court was thinking or make any  
15 conclusory statements. It's clear from the record that that  
16 was the Court's intention, so we believe that the vehicle of  
17 Rule 60(b) is appropriate here.

18 And in terms of whether it was appropriate for the  
19 United States to offer Rule 62.1 and the indicative ruling  
20 route given that when our motion was filed the appeal hadn't  
21 been docketed and then at the time that we filed our rebuttal  
22 it had been docketed, we believe that that's appropriate. I  
23 think the text of Rule 62.1, you know, permits the Court to,  
24 you know, issue an indicative ruling based on the request for  
25 relief itself.

1 Thank you.

2 THE COURT: Okay. Thank you, Ms. Vera.

3 Now I'd like to move to the motion for reconsideration  
4 filed by the United States. Is that you again, Ms. Vera, or  
5 is that someone else?

6 MS. VERA: Yes, Your Honor, I'll be addressing that.

7 THE COURT: Okay. You may proceed.

8 MS. VERA: Thank you, Your Honor.

9 The United States has asked the Court to reconsider its  
10 termination of the provisions governing conditions for youth  
11 charged as adults in light of changed circumstances. The  
12 Court terminated those provisions, apparently based on the  
13 existence of the JH decree. The Court did not make PLRA  
14 findings as to the youthful detainees' provisions, instead  
15 hinging its analysis and its decision on those provisions on  
16 the existence of another decree. So the United States has  
17 asked the Court to reconsider its termination of those  
18 provisions and conduct the PLRA need-narrowness-intrusiveness  
19 analysis.

20 It would do so in an indicative ruling as permitted by  
21 Rule 62.1. And if the Court finds that's the JCA provisions  
22 should be retained, as the United States argues it should,  
23 then it would issue an indicative ruling that, if remanded for  
24 that limited purpose, the Court would grant our motion and  
25 conduct the analysis and find that the remedies for JCA

1 conditions remain necessary to correct constitutional  
2 violations and PLRA compliance. The appropriate --

3 THE COURT: Let me ask -- oh, go ahead. I'm sorry. Go  
4 ahead.

5 MS. VERA: Okay. Thank you, Your Honor.

6 It is appropriate for the Court to reconsider its  
7 termination of the JCA provisions. Rule 60(b)(5) addresses  
8 this precise situation where there has been a change in facts.  
9 The Court's order expressed an intention that conditions for  
10 youth be governed by the JH decree, but that decree was  
11 abruptly terminated. And JH was terminated in a way that did  
12 not address the merits of the case. There was no decision of  
13 any issue or claim. And in any event, the United States is  
14 not barred by any decision in JH, even if there were one on  
15 the merits, because we're not a party to that case. We chose  
16 to pursue our own case rather than intervene in that case,  
17 which is permitted by CRIPA but not required by it.

18 Neither the JH court nor this one did the PLRA analysis  
19 in terminating the oversight of the youth in detention.  
20 However, there is a substantial record from which the Court  
21 could make that determination as well as the determination  
22 that the youth remedies are still necessary and permitted by  
23 the PLRA. And the record before the Court is sufficient to  
24 make those findings. The requirement under *Castillo* is that  
25 the determination has to be made based on the record at the



1 time that the motion for termination was filed.

2 Thank you, Your Honor.

3 THE COURT: Well, let me ask you this. Obviously  
4 everybody knew that the JH case was proceeding along with  
5 ours. We reference the case quite a bit throughout every  
6 monitor's report that we had in this case. The parties for  
7 the plaintiffs in JH moved to intervene in this one here or at  
8 least to have access to the hearings and the filings and even  
9 participated to some degree by at least being present in the  
10 courtroom.

11 What, if anything, stopped the United States from  
12 seeking to intervene in the JH case once the United States  
13 learned that that case might be going in a direction where the  
14 judge was asked to discontinue the consent decree? I mean,  
15 couldn't the United States have brought this intention to  
16 Judge Jordan in the JH case that, you know, the things  
17 occurring in JH -- well, I guess that the Court ought to be  
18 mindful that there are those who are in the custody of the  
19 County housed at Henley-Young, you know, that there may be  
20 some other court proceeding or something that you ought to  
21 consider, Judge, before you dissolve the consent decree or  
22 allow the consent decree to be terminated? So why did the  
23 United States not move to intervene?

24 MS. VERA: Well, Your Honor, just to back up a little  
25 bit. The defendants have very strongly argued that, you know,

1 the United States, given that we have filed this motion now,  
2 should have intervened then, and there is simply no obligation  
3 to intervene in another case. The JH case has always been  
4 different from the youthful detainees' provisions in this case  
5 in terms of the origin of that case focusing on the youth  
6 court youth housed at Henley-Young at that time versus in our  
7 case on the JCAs. There simply is no obligation to intervene  
8 in another case.

9 It also -- various strategic factors would go into a  
10 determination to intervene, including whether intervention  
11 would have been timely. Under CRIPA, the United States is  
12 pursuing enforcement of the civil rights of detainees in the  
13 sheriff's custody in Hinds County, including JCAs. It's just  
14 a separate case, and there was never any obligation to  
15 intervene there.

16 And the reason that the United States filed the pending  
17 motion for reconsideration was because the changed  
18 circumstances in that case, which is that the consent decree  
19 there was terminated, was the impetus for that motion.

20 THE COURT: I realize you -- it sounds like the United  
21 States, I guess, could have or at least did weigh its option  
22 and said, well, you know, if we file this motion, we know it  
23 may be denied because that case is several years old and  
24 it's -- and, you know, intervention as a right or at the  
25 discretion of the Court might be too late. But there was no

1 attempt by the United States to at least put that court on  
2 notice of the impact, if you will, of this termination over  
3 persons who the United States say need judicial supervision.  
4 Because there are persons at Henley-Young who would otherwise  
5 be under the auspices, if you will, of the receivership we  
6 have here; right?

7 MS. VERA: Your Honor, just to clarify, I did not mean  
8 to suggest that the United States actively considered  
9 intervening in the JH case. The United States has always  
10 viewed the youthful detainees' provisions in this case as  
11 somewhat separate from the issues and the questions and the  
12 sort of purview of the JH case, which concerns Henley-Young  
13 itself, the juvenile justice facility. And as Your Honor  
14 knows, the youth that are within the auspices or that were  
15 within the auspices of this case have always been, you know, a  
16 separate group of juvenile detainees who have been charged as  
17 adults and who only have been held at Henley-Young for part of  
18 the pendency of this case. So, Your Honor, if I suggested  
19 that -- I did not mean to suggest that intervention was  
20 something that the United States actively considered in the JH  
21 case.

22 THE COURT: Okay. Thank you. No, no, I did not take  
23 it that the United States actively considered that. And --  
24 okay. Is that all, Ms. Vera?

25 MS. VERA: Almost, Your Honor.

1 THE COURT: Okay. No problem.

2 MS. VERA: On a related note, I would just note for the  
3 Court's information that the United States was somewhat  
4 surprised that the plaintiffs ultimately agreed to the  
5 termination in that case, and so it all transpired fairly  
6 rapidly from our perspective.

7 THE COURT: Okay. Thank you.

8 Who will respond on behalf of the County and/or the  
9 sheriff?

10 MR. MORISANI: Good afternoon again, Your Honor. Nick  
11 Morisani. I'll respond again on behalf of the defendants.

12 THE COURT: You may proceed.

13 MR. MORISANI: Your Honor -- thank you, Your Honor.

14 On April 13th this court -- you know, obviously I'm  
15 sort of saying things the Court already knows, but on  
16 April 13th the Court terminated the consent decree provisions  
17 in this case related to youthful offenders. Under the rules,  
18 the plaintiff had until May 11th of 2022 to file a motion to  
19 reconsider -- a motion to reconsider under Rule 59(e).

20 Meanwhile, in the JH case, the County had moved to  
21 terminate the consent decree prior to that date, about roughly  
22 a month prior, on March 18th of 2022. On April 17th, of  
23 course, the JH consent decree was stayed by operation of the  
24 PLRA. The JH plaintiffs, they sought retroactive  
25 postponement, but that was denied April 26th.

1           And, again, I'm reciting these dates, Your Honor,  
2     because this all happened -- it was all within the 28 days for  
3     seeking reconsideration under Rule 59(e). Your Honor, this is  
4     the United States Department of Justice. There's no way that  
5     they didn't know that the JH case and these proceedings were  
6     happening. There's no way. I think if there could be any  
7     doubt, the JH plaintiffs obviously removed it when they put  
8     themselves on everyone's radar when they became interested  
9     parties in this case back in December of 2017, but that's not  
10    even to mention what the Court wrote in the Court's order.  
11    The Court terminated the youthful offender provisions and  
12    expressly directed the parties to submit any concerns related  
13    to the JCA to Chief Judge Jordan in the JH case.

14           So I just -- I say all this just to say, Your Honor,  
15    they had more than enough information on which to base a  
16    timely, properly filed Rule 59(e) motion. They, of course,  
17    didn't do that. They waited for the JH consent decree to be  
18    terminated, and within 20 days sought to have the terminated  
19    provisions here resurrected and just dropped into the new  
20    injunction. You know, far from being a properly filed,  
21    well-supported motion for reconsideration, Your Honor, this is  
22    judge-shopping, and it should be rejected, Your Honor.

23           THE COURT: Why does the County suggest that it's  
24    judge-shopping when there are youth who are being held as  
25    adults and the receivership order itself, the receivership

1 order that's in place now that the County seeks to have this  
2 court reconsider, the receivership order gives the receiver  
3 the right to, you know, inspect and do things wherever anyone  
4 is housed, I think, up under the receivership. So children  
5 who are being held as adults are not being held at RDC  
6 anymore. They're being held somewhere, so who would be  
7 responsible for managing them? Since Judge Jordan has --

8 MR. MORISANI: The County --

9 THE COURT: Since Judge Jordan has said that there's no  
10 need anymore to have a consent decree in the case of the JH  
11 case, then who should be there to help protect those children?

12 MR. MORISANI: Your Honor, I think if this were as  
13 important an issue to the United States Department of Justice  
14 as making sure that someone is there to protect them, they  
15 would have moved very quickly with their resources to either  
16 have this court reconsider its order or intervene in front of  
17 Judge Jordan.

18 THE COURT: I think the United States argued at some  
19 point that, you know -- again, thinking back at what the Court  
20 heard and what is in the Court's order throughout the  
21 monitoring and throughout the hearings and ultimate resolution  
22 on this thing, the County pointed to the fact that there was  
23 a -- there is a consent decree. At one time the County was  
24 arguing that there is a consent decree in place in the JH case  
25 that governs and controls those children being housed there.

1 But now that that consent decree is no longer there,  
2 again, who is supposed to watch over those children and make  
3 sure that their constitutional protection -- their  
4 constitutional rights are being protected if the receiver  
5 cannot do it at this point?

6 MR. MORISANI: Your Honor, they're in the County's  
7 custody, and the County has -- has a responsibility to house  
8 those juveniles charged as adults. And I think just to add on  
9 briefly, the County made clear its intentions as early as  
10 January 2022 that it was going to at a minimum seek to modify  
11 that consent decree. That was a part of the public record,  
12 the same public record that was available to us that was also  
13 available to the Department of Justice.

14 THE COURT: Okay. You wish to offer anything else,  
15 Mr. Morisani?

16 MR. MORISANI: Yes, sir. Just briefly. Your Honor  
17 posed the question of why the plaintiffs did not seek to  
18 intervene, and the only -- it looks to me the only thing I  
19 heard was that we just didn't have an obligation, Your Honor,  
20 which, again, I think only reinforces the idea that there was  
21 more going on here than meets the eye, because -- well, one  
22 other thing, too, Your Honor.

23 There were some statements made about there's more than  
24 enough evidence in the record to make a determination and  
25 there's more than enough evidence in the record to make a

1 finding, and I think if you look at the basis for this motion,  
2 it was a Rule 60(b)(5) motion. I think -- there were two  
3 bases: 60(b)(5) and 60(b)(6). And I just want -- just want  
4 to put on the record that 60(b)(5) is clear that you can't use  
5 60(b)(5) to relitigate issues. Statements like that at this  
6 hearing, that there's enough evidence to make a determination,  
7 to make findings, that is plainly asking this court to  
8 relitigate those issues, Your Honor, related to youthful  
9 offenders, which the case law says is not the purpose of Rule  
10 60(b)(5).

11 I think, again, just for the record, Your Honor, I just  
12 want to point out -- we raised this issue in a footnote, but I  
13 just want to make the argument in this hearing that Rule  
14 60(b)(6) is not applicable here because they're basing their  
15 60(b)(6) request on the exact same facts and circumstances  
16 that they base the 60(b)(5) request, and again, there's  
17 authority from a position that you can't -- Rule 60(b)(6) is  
18 exclusive of the other five provisions in 60(b). You can't  
19 take a set of facts and say they meet 60(b)(4), 60(b)(5), but  
20 they also meet 60(b)(6), Your Honor. That's contrary to Fifth  
21 Circuit case law, and I can give you a case citation if that  
22 would help, but I just wanted to make sure that was in the  
23 record as well.

24 And also, Your Honor, 60(b)(5) is not intended to  
25 address changes in facts. I think if it were, we would have



1 60(b)(5) motions filed after every single judgment where there  
2 was the slightest change in facts no matter how long in the  
3 future.

4 THE COURT: 60(b)(6), is it -- is 60(b)(6) viewed as a  
5 catchall?

6 MR. MORISANI: It is, Your Honor, but in the *Hesling v.*  
7 *CSX Transportation* case -- it's 396 F.3d 632; it's at page 643  
8 and 644 -- the Fifth Circuit said Rule 60(b)(6), the relief  
9 under that provision is "mutually exclusive from relief  
10 available under sections (1) through (5)."

11 Similar case is *Hess v. Cockrell*, 281 F.3d 212 at page  
12 215. Those are both Fifth Circuit cases, Your Honor.

13 THE COURT: Okay. Well, let me ask. I know the County  
14 spent part of its brief arguing collateral estoppel and res  
15 judicata. I know the Government has responded to that in  
16 their rebuttal claiming that those particular doctrines would  
17 not apply to them in this particular case. What does the  
18 County say about that?

19 MR. MORISANI: Your Honor, we would take the position  
20 that collateral estoppel does in fact apply. These are --  
21 well, I'll start with the privity question, Your Honor. I  
22 think it's -- just frankly, I'm surprised that the DOJ -- that  
23 the plaintiffs would argue that they were not in privity with  
24 plaintiffs advocating for the rights of the very same  
25 detainees that they're advocating the rights of in this case.

1 I'm a little surprised --

2 THE COURT: They never represented the JH people;  
3 right?

4 MR. MORISANI: They don't represent the plaintiffs at  
5 RDC -- the individuals at RDC either. Your Honor, I agree  
6 with that.

7 THE COURT: But you're saying that -- you're saying  
8 that they were in privity with the JH plaintiffs?

9 MR. MORISANI: That's our position -- that's our  
10 argument, Your Honor, that they are in privity with the JH  
11 plaintiffs, who are the very same detainees that they're  
12 advocating the rights of in this case.

13 THE COURT: Was it -- were the JH parties bringing the  
14 same claims as the United States?

15 MR. MORISANI: Their claims involved -- well, they  
16 involved the conditions of confinement at Henley-Young, Your  
17 Honor. They -- you know, I think this sort of trickles into  
18 other elements in the analysis, so I'll just -- I'll continue,  
19 but, you know, CRIPA gives the plaintiff an opportunity to  
20 come in and say, okay, the minimum constitutional standards  
21 are not being met here; we have authority to file a lawsuit on  
22 behalf of the detainees here -- or not on their behalf but a  
23 lawsuit to compel compliance with the minimal standards. The  
24 JH plaintiffs weren't constrained by that limitation. In a  
25 lot of ways, the JH plaintiffs were going above and beyond

1 that, so I don't see how there's any question they couldn't be  
2 in privity. The JH plaintiffs were asking for more than the  
3 constitutional remedies. All CRIPA allows the Government to  
4 do here is just, okay, you're not complying with the  
5 constitution; you've got to get things to the minimal levels.

6 THE COURT: If the Court accepts that argument,  
7 Mr. Morisani, what about a detainee who wanted to bring his or  
8 her -- his own claim, as in a violation of my constitutional  
9 rights, as has been done, I think, where individuals have sued  
10 the County under the federal constitution and the MTCA, I  
11 guess, but, again, they're claiming that my rights have been  
12 violated under the Fourth Amendment, under the due process  
13 clause or whatever. Those claims have been allowed to  
14 proceed. Wouldn't they be in privity with the United States  
15 if the Court accepts your argument?

16 MR. MORISANI: I don't think they would, Your Honor,  
17 and the reason why is that those are single plaintiff claims  
18 about individual circumstances. This is systemwide reform  
19 that's being sought both by the JH plaintiffs as a class and  
20 by the DOJ as the federal government. These are systemic  
21 claims, that means they're across the board for everyone that  
22 comes into that facility, both of these claims. It's parallel  
23 in that sense. It's not parallel to an individual plaintiff  
24 who's got -- whose argument is going to be measured by a  
25 different standard, his use-of-force claim is going to be

1 measured by a different standard. But I guess my point, Your  
2 Honor, is that those are single plaintiffs, single sets of  
3 facts, whereas this is systemic-wide relief.

4 THE COURT: So if a group of plaintiffs hired one  
5 lawyer to represent their interest against Hinds County, would  
6 that change your analysis at all? If a group of plaintiffs --

7 MR. MORISANI: I think that's a --

8 THE COURT: -- not necessarily a -- because the group  
9 of plaintiffs in JH were the groups of plaintiffs in  
10 Henley-Young, if I'm not mistaken. It was all youth. But if  
11 a group of the plaintiffs are detainees at RDC, 15, 20, 100 of  
12 them got one attorney to file an action on their behalf, which  
13 includes these same claims, are you saying that they could not  
14 because those claims would be barred by this -- by this action  
15 by the United States?

16 MR. MORISANI: Well, Your Honor, I guess just in  
17 thinking through that, just here in the hearing, I think  
18 that's a different situation. First, I think that's a  
19 different situation than what you have here because you had  
20 every plaintiff in Henley-Young, all the detainees. There was  
21 no carve-out. It was every detainee in Henley-Young. And  
22 that's what the DOJ lawsuit in this case is for. Every  
23 detainee in that facility. It's a smaller part of this  
24 lawsuit, but it's the same -- it's the same claim.

25 Now, to answer your question more directly under the

1 carve-out, if you said I had 100 plaintiffs in this case, I  
2 believe it would depend on the relief they seek. If they're  
3 seeking systemic relief throughout the entire facility, I  
4 think, yes, that would be subsumed in this existing lawsuit.

5 THE COURT: What if they were seeking systemic relief  
6 and monetary damages? That makes it different?

7 MR. MORISANI: That's an interesting wrinkle, Your  
8 Honor, but I don't see how -- go ahead.

9 THE COURT: Because there are detainees there who have  
10 actually sued the County for the constitutional violations  
11 that they suffered, and those matters have gone through  
12 discovery and trial dates have been set, and ultimately the  
13 County has at least settled some of them; right?

14 MR. MORISANI: I believe so, Your Honor, yes, sir.

15 THE COURT: Okay. I'm just trying to figure out if I  
16 accept your privity argument, then how does that apply to  
17 other plaintiffs? And that privity argument of yours, is that  
18 the same for the collateral estoppel that you've argued as  
19 well as your res judicata?

20 MR. MORISANI: Yes, Your Honor.

21 THE COURT: All right. Anything else, Mr. Morisani?

22 MR. MORISANI: No, sir. Thank you, Your Honor.

23 THE COURT: All right. Any rebuttal by the United  
24 States?

25 MS. VERA: Yes, Your Honor. This case insofar as it

1 addressed the conditions of juveniles charged as adults,  
2 youth, has always concerned youth charged as adults who, when  
3 this case was initiated, were housed at Raymond. They were  
4 housed in the adult jail. This case always was meant to  
5 follow those JCAs wherever the County was housing them and  
6 govern the conditions and ensure that the conditions that the  
7 JCAs were housed in would be constitutional and appropriate  
8 for their needs.

9         The JH case only concerned Henley-Young, which at the  
10 time that that case was initiated concerned housed youth --  
11 court-adjudicated youth. So the very -- the crux of the issue  
12 here is that the United States and the JH plaintiffs are  
13 different parties, they brought different legal claims based  
14 on different facts and different causes of action, and the  
15 targets of these cases have always been distinct.

16         The defendants' arguments about privity are not enough  
17 to overcome the bedrock principle that a litigant cannot be  
18 bound by something that happens in a case involving different  
19 parties, and the United States discussed this in its rebuttal  
20 brief to some extent, but the defendants' arguments that  
21 privity exists are unavailing, and sort of somewhat similar  
22 interests don't establish privity and cannot bind a nonparty  
23 to a case.

24         CRIPA contemplates that there may be separate  
25 systemwide cases and that the United States won't be bound by

1 those cases. And, you know, therefore the arguments of  
2 defendants about res judicata and collateral estoppel are  
3 unavailing and violate basic principles of due process and the  
4 ability of litigants to have their day in court.

5 And so going back to the notion that the United States  
6 should have intervened in JH and failed to do so, there was  
7 never any obligation to do so, and the motion to reconsider  
8 that the United States filed was appropriately filed as a  
9 result of the termination of the JH case that occurred shortly  
10 before we filed this motion.

11 THE COURT: So -- I'm sorry. So you're suggesting that  
12 the County sets the timeline going back to April and basically  
13 those dates ought to be the tip-off dates for the Government.  
14 I believe I'm hearing you say, Ms. Vera, that, well, even if  
15 the United States would want to do something, they should not  
16 do anything until after the JH decree had been terminated? I  
17 mean that the timeline should start there?

18 MS. VERA: I'm not sure, Your Honor, that there's a  
19 timeline that should start except for the fact that the motion  
20 on the table today is one that was precipitated by the  
21 termination order that the JH court issued and it was not  
22 something -- the United States could have -- could have tried  
23 to intervene at certain points but didn't and was not  
24 obligated to do so. And so, you know, the change in  
25 circumstances that caused the Court's reasoning for the JCA

1 provisions to no longer apply to the current facts, that  
2 happened when the order was actually terminated, which  
3 occurred shortly after the plaintiffs in JH consented to the  
4 termination motion. So it was when all of that transpired  
5 that the United States filed this motion.

6 THE COURT: In relying on Rule 60(b) or -- 60(b), I  
7 think, the County points out that you -- you know, look at all  
8 those other factors that preceded it, but you have to find, I  
9 guess, some extraordinary circumstance. How does the United  
10 States contend it meets -- if the standard is for 60(b)(6)  
11 motions that, you know, one travels through the window of  
12 extraordinary circumstances, what about the facts that are  
13 before this court would be extraordinary and would allow this  
14 court to exercise relief under 60(b)?

15 MS. VERA: Well, Your Honor, Rule 60(b)(5) -- contrary  
16 to the defendants' assertion that it does not cover changes in  
17 circumstances or facts, the case law interpreting 60(b)(5)  
18 does establish that changes in fact are the type of  
19 circumstances that do justify granting a Rule 60(b)(5) motion.  
20 You know, the actual wording is that the -- the clause from  
21 (b)(5) that the changed facts falls under is that applying a  
22 judgment prospectively is no longer equitable, and the cases  
23 do interpret that language to include changes in fact that  
24 make the judgment no longer equitable.

25 But then as to the catchall 60(b)(6), yes, Your Honor.



1 If the Court found that was the only route for granting the  
2 motion for reconsideration, we do think that the circumstances  
3 here are of enough import that it would be justified.

4 THE COURT: Well, I guess I just want to ask this  
5 simple question, because the case of United States versus  
6 Hinds County was a case about persons who were housed at the  
7 Raymond Detention Center or the Jackson Work Center -- the  
8 workers center or the Jackson Detention Center. That's how  
9 the case started out. And part of the remedy that the parties  
10 agreed to at some point in time that the Court signed off on  
11 is that juveniles will no longer be held at the Raymond  
12 Detention Center.

13 The parties satisfied that requirement by putting them  
14 at Henley-Young, and the Court had -- a part of the monitoring  
15 team would evaluate, would report back to the Court on how  
16 those youth being held at Henley-Young, how they were doing  
17 and what was going on with them: Were they getting the  
18 educational resources that they needed; you know, were they  
19 getting the psychological resources that they needed and all  
20 of that. But in this court's ruling appointing -- of  
21 narrowing the consent decree and ultimately appointing the  
22 receiver, I think that order acknowledged that -- well, there  
23 is some supervision over there for the children being housed  
24 at Henley-Young, those children who are charged as adults,  
25 there is some supervision going over there because there is a

1 consent decree in place. There is some monitoring in place by  
2 a court of -- by a fellow judge here. But now that that judge  
3 has decided to terminate the consent decree, I guess isn't  
4 that extraordinary -- would that be an extraordinary  
5 circumstance knowing that those youth who are charged as  
6 adults are still being housed at that facility and would fall  
7 under any consent decree or any receivership order by this  
8 court? I mean, would that justify the extraordinary and  
9 compelling reasons?

10 MS. VERA: Yes, Your Honor, I believe it would. It is  
11 an extraordinary turn of events insofar as it certainly seemed  
12 from Your Honor's order that the Court in this case was  
13 contemplating that the other case would continue to protect  
14 the rights of the youth housed at Henley-Young. And since  
15 that protection evaporated, I believe it would justify that,  
16 Your Honor.

17 THE COURT: Thank you. And I'm going to give the  
18 County an opportunity to respond because that was a specific  
19 question asked of the Government that the County may not -- I  
20 think you ought to have an opportunity to respond to it if you  
21 wish.

22 MR. MORISANI: Your Honor, I would like to respond. I  
23 appreciate the opportunity to respond. I think, you know,  
24 there's an assumption underlying this entire argument by the  
25 plaintiff, and that's that somehow there was some guarantee

1 that the County was going to prevail on its motion to  
2 terminate in the JH case. There was no such guarantee. That  
3 was a hotly litigated motion that the JH plaintiffs on the  
4 record said, look, they don't have a right to discovery.  
5 We're going to conduct all sorts of invasive discovery. And  
6 then overnight -- literally overnight, they call off the dogs,  
7 so to speak, and the DOJ files a motion in this case to try to  
8 bring the provisions back. It just -- the timing is odd. But  
9 that's neither here nor there.

10 The point, Your Honor, is that there was no guarantee  
11 of success on the County's motion. They're treating that as a  
12 foregone conclusion, and I think that's unfair to do that.  
13 That consent decree very well could have stayed in place.

14 But I think in addition to that, Your Honor, Your Honor  
15 asked the question, and I think that there was -- 60(b)(6)  
16 requires extraordinary circumstances, and I think the reasons  
17 we laid out earlier in the timeline shows there was nothing  
18 extraordinary about what happened here. This was all  
19 happening in real time on the public record, and the plaintiff  
20 did not seek intervention in that case.

21 I think in addition to that, the -- you know, there's  
22 an argument from the plaintiffs also about how these were  
23 somehow distinct categor- -- distinct groups of plaintiffs or  
24 distinct issues being litigated here. There's nothing new  
25 about that fact, Your Honor. That's something that could have

1     been raised in a Rule 59(e) motion after Your Honor issued the  
2     order terminating those consent decree provisions. So that  
3     can't be called -- that can't be used to justify some sort of  
4     extraordinary circumstance or change in circumstances, the  
5     fact that these may have been different or distinct groups.

6             Beyond that, though, Your Honor, I don't have anything  
7     else. I appreciate the opportunity to respond to that, Your  
8     Honor.

9             THE COURT: Thank you, Mr. Morisani.

10            Now we'll move on. Now the County has the right to go  
11     first and last, I guess, with respect to its motion -- well,  
12     hold on for one second.

13            Let's take a ten-minute break before we get to that  
14     point for the court reporter, and then we'll proceed then.  
15     You all can stay on the line if you wish. Continue muting.  
16     You can turn off your camera if you wish. We'll be back in  
17     about ten minutes.

18                     (A brief recess was taken.)

19            THE COURT: I'll hear from the County and/or the  
20     sheriff on the urgent and necessitous motion.

21            MR. SHELSON: Good afternoon, Your Honor. This is Jim  
22     Shelson for the County and the sheriff. May I proceed, Your  
23     Honor?

24            THE COURT: You may, Mr. Shelson.

25            MR. SHELSON: Your Honor, this is the motion to stay,

1 ECF 227. I think everybody agrees on the four factors the  
2 Court is to consider on a motion to stay. I don't know, Your  
3 Honor, that we have a lot to add that's not already in our  
4 papers, so I'm going to go through the factors, but I'm going  
5 to be brief.

6 Your Honor, the first factor is whether the applicant  
7 has made a strong showing that it is likely to succeed on the  
8 merits. The merits question with respect to the motion to  
9 stay is whether the receiver orders exceed the permissible  
10 scope of prospective relief under the PLRA. Your Honor, I  
11 don't think based on the papers that anybody disputes that the  
12 receiver orders are prospective relief under the PLRA. So the  
13 County, Your Honor, is likely to succeed on the merits of the  
14 issue that the motion to stay presents for the following  
15 reasons.

16 First, Your Honor, the receiver orders exceed the  
17 need-narrowness-intrusiveness standard of the PLRA because  
18 they are a remedy for the violation of the consent decree.  
19 The consent decree, as the Court found, exceeded  
20 constitutional minimums. It was superseded by the new  
21 injunction, and the consent decree is no longer the operative  
22 order.

23 Your Honor, we went through this in our rebuttal, but  
24 just briefly, with respect to the first order of contempt, the  
25 Court found that the County was not in compliance with 30

1 paragraphs of the consent decree. Twenty of those 30, or  
2 67 percent of those paragraphs, are not in the new injunction.  
3 There are a total of 34 paragraphs in the new injunction  
4 exclusive of the monitoring provisions. At the time the new  
5 injunction was issued, the County was complying to some degree  
6 with 28 of the 34 paragraphs that are in the new injunction,  
7 or 82 percent of them.

8 In a nutshell, Your Honor, entering the receiver orders  
9 to remedy what the Court found to be violations of the consent  
10 decree is not narrowly drawn prospective relief because the  
11 consent decree is no longer even the operative order.

12 Your Honor, the second factor is whether the County  
13 will be irreparably harmed absent a stay. Your Honor, again  
14 our position on this is succinct. The County will be  
15 irreparably harmed absent a stay because the receiver orders  
16 completely divest the County of all powers, authorities,  
17 rights, and privileges it now possesses relating to RDC and  
18 gives it all to the receiver.

19 Your Honor, the harm in that regard is not speculative.  
20 The receiver has complete authority over RDC, and the County's  
21 authority is nil. That is harmful to the County, we submit,  
22 Your Honor, for obvious reasons. The *Plata* case which the  
23 Court has cited itself notes that the imposition of a receiver  
24 is a "debilitation of the democratic process." Those concerns  
25 are, in our view, sufficient to outweigh the remedy of the

1 receiver orders that the Court put into place.

2       The third factor, Your Honor, is whether a stay would  
3 substantially injure other parties interested in the  
4 proceeding. The United States points out that it is suing in  
5 an enforcement capacity, but that does not mean, Your Honor,  
6 that it essentially becomes the attorney for every detainee at  
7 RDC. This is not a class action. There are no individual  
8 plaintiffs. No individualized relief is at issue here nor was  
9 granted, and the United States is the only plaintiff.

10       There was no evidence adduced at the evidentiary  
11 hearing that the consent decree was helpful in improving  
12 conditions at RDC. The receiver orders are a remedy for the  
13 Court's finding that the County violated a now inoperative  
14 consent decree, and there was no evidence that -- there is no  
15 evidence that a receiver will more effectively address any  
16 issues with RDC.

17       And finally, Your Honor, the fourth factor is whether a  
18 stay is in the public interest. Your Honor, it is in the  
19 County's view because the receiver is not accountable to the  
20 voters and taxpayers of Hinds County. As we noted in our  
21 briefing, the receivership has been described as a nuclear  
22 option. We think that is accurate. A stay of that nuclear  
23 option is in the public interest because the receiver has  
24 complete authority over RDC but is not accountable in any way  
25 to the people of Hinds County.

1           And for those reasons, Your Honor, the County  
2 respectfully submits that the Court should grant the motion to  
3 stay.

4           THE COURT: Let me just ask these couple of questions,  
5 Mr. Shelson. So if the Court makes a finding that the County  
6 has not done what it needs to do systemically over a number of  
7 months, years, or whatever, are you saying that the Court,  
8 because of concerns with allow- -- you know, taking it out of  
9 the hands of the persons who were elected by the people,  
10 taking it out of their hands is wrong?

11           If the Court makes a finding that they have either not  
12 done -- done things -- that they continuously violate the  
13 constitutional rights of these detainees, that they have not  
14 sought to -- if the Court finds that they have not done that  
15 which is required and nothing else has worked, then the Court  
16 has no tools at its disposal?

17           MR. SHELSON: Well, Your Honor, the County is  
18 definitely not saying that the Court has no tools at its  
19 disposal. But the question Your Honor asked before that point  
20 is -- about taking it out of the hands of the County, that is  
21 part of what we're saying, Your Honor, but it's not all of it.  
22 And the part that that issue really applies to, Your Honor,  
23 are the two factors that go to injury, and so what we're  
24 specifically saying with regard to taking it out of the hands  
25 of the people is that -- with respect to the two injury



1 factors, that the fact that it's being taken out of the hands  
2 of the people militates in favor of a stay.

3 THE COURT: Okay. Now, I know the County I think at  
4 some point in its brief talks, I think, and I may be mistaken,  
5 but the unreviewable decisions I think might be some language  
6 that was used with respect to the receiver, but the order  
7 appointing the receiver and setting forth his duties, there  
8 are checks and balances there with respect to what the  
9 receiver can do, and it gives the parties the right to contest  
10 certain decisions, certain obligations, certain choices,  
11 certain things that the receiver might do; right? Like the  
12 budget.

13 If the parties don't agree -- I guess the first part of  
14 the budgeting thing is that the receiver must send his budget  
15 to the parties first, get feedback from the parties, and if  
16 the parties disagree with the budget, then the parties have a  
17 right to do what they've done in this instance, come to the  
18 Court to have the Court take another look, I guess. I mean, I  
19 think the receiver's budget, for example, staff terms of  
20 service and other significant financial agreements are subject  
21 to approval of the Court before they may take effect. That's  
22 page 10, paragraph 10 of the duties appointing the receiver.  
23 So, I mean, the receiver will not be operating in a sense  
24 where his decisions are unfettered; right?

25 MR. SHELSON: Well, Your Honor, if I could, I think

1 three things in response to that.

2 The first is that the County-elected officials and its  
3 unelected employees are completely divested of authority.

4 That is clear.

5 The second thing I'd say, Your Honor, is there is the  
6 process for the example the Court used for the budget, but  
7 ultimately -- well, not ultimately. The County has lost  
8 control of its budget for RDC under the order. Now, you're  
9 right, it could convince the Court that the receiver's budget  
10 could -- could be modified in some way from what he asked,  
11 Your Honor, but the County's still not in control of its  
12 budget.

13 And the final point, Your Honor, is it unfettered?  
14 It's not unfettered in the sense that for certain things  
15 specified in the order, there are mechanisms for coming to the  
16 Court for the Court to decide. But it is unfettered in the  
17 sense that the County no longer has any control over RDC.

18 THE COURT: Let me ask you this on another subject. I  
19 think the County mentions the indemnity language or said that  
20 the County might be indemnified, I believe -- I think I read  
21 in the County's argument that even the Court's granting the  
22 receiver indemnity, I think the County suggests that that  
23 could possibly indemnify anything that the receiver does. I  
24 think -- I don't believe the County is suggesting that if the  
25 receiver does something illegally, it might be -- the County

1 may be responsible for indemnifying the receiver. Is that the  
2 County's position, that the indemnity language that the Court  
3 has suggested through its order is much too broad?

4 MR. SHELSON: Respectfully, Your Honor, that is the  
5 County's position.

6 THE COURT: Okay. At page 7 of the order at paragraph  
7 6, so this would be under the access, immunity, interference  
8 with receiver: Defendants shall completely indemnify the  
9 receiver and their personnel in any litigation brought against  
10 the receiver or their personnel regarding activities conducted  
11 in the course of the receiver's official duties.

12 I take it that -- I guess I should change that to in  
13 the course and scope? I mean, it seems to me that this court  
14 will not be granting indemnity for -- his official duties  
15 would not be to do things illegally; right? Does the County  
16 read that as saying that the receiver will be blessed with  
17 doing things illegally and then if he's sued by somebody, that  
18 the County would have to indemnify him?

19 MR. SHELSON: Your Honor, the County's concern is that  
20 it says in any litigation, and so -- in any litigation  
21 regarding activities conducted in the course of the receiver's  
22 official duties, so we hope we're wrong, but if -- the Court  
23 asked a minute ago is -- if the receiver committed an illegal  
24 act, we think that that sentence could be alleged to require  
25 the County to indemnify the receiver.

1           THE COURT: Even though the receiver might be acting  
2 illegally?

3           MR. SHELSON: Well, correct, Your Honor, because it  
4 says any litigation. And the only limiting thing in that is  
5 "in the course of."

6           THE COURT: Right. Wouldn't that be sufficient  
7 limitation of it? I'm just asking. I know lawyers quibble  
8 about insurance language all the time on duties to defend and  
9 indemnify and all of that.

10          MR. SHELSON: I think a credible argument could be made  
11 that he was -- that -- without further limiting language, that  
12 if the receiver committed an illegal act in the context of his  
13 official duties, that it's subsumed on paragraph 6 on page 7  
14 of the order.

15          THE COURT: Now, I guess to the extent that any party  
16 finds that the order should be modified -- I'm looking at the  
17 very last paragraph of the order at page 13. It says -- the  
18 heading Roman numeral V, Modification. The Court acknowledges  
19 that the receiver -- that this is significant in scope and  
20 dimension, as the Court said. Accordingly this order may be  
21 modified as necessary from time to time in accordance with  
22 federal law, including by motion of the parties or at the  
23 receiver's request, to ensure the success of the receiver and  
24 the eventual return of RDC to the operation and control of the  
25 defendants.

1           If the County believes that there are matters that need  
2   to be crystallized in some way, does that paragraph allow the  
3   County to come to court through a motion requesting any  
4   particular modification it believes that it needs?

5           MR. SHELSON: It does, Your Honor, but I don't know  
6   that the County could do that given that the appeal has been  
7   docketed.

8           THE COURT: Okay. All right. Is there anything else  
9   on your order that you wish to argue at this point,  
10   Mr. Shelson?

11          MR. SHELSON: No, Your Honor.

12          THE COURT: All right. Thank you.

13          Who will argue for the United States?

14          MS. VERA: I will argue on this one as well, Your  
15   Honor. Helen Vera.

16          THE COURT: You drew the short straw, huh, Ms. Vera?  
17   Happy Thanksgiving to you, too. Go ahead. I'm sorry.

18          MS. VERA: Thank you, Your Honor.

19          The Court should not grant a stay of the receiver  
20   orders as the defendants argue. The constitutional violations  
21   have gone on too long, and the harm and the risk of harm at  
22   RDC is too great. The sooner the receiver begins work, the  
23   better. It's time for conditions at RDC to meet  
24   constitutional standards, which defendants do not even attempt  
25   to claim is the case. And as the Court already found, the

1 receivership will actually help the County minimize waste,  
2 spend resources more wisely, and develop a plan for long-term  
3 functional management of the facility.

4           It's certainly the case that we agree the four  
5 traditional stay factors govern here, and the defendants have  
6 not made the requisite showing on any of them. I'll start  
7 with likelihood of success on the merits.

8           The defendants have not made a strong showing that  
9 they're likely to succeed on the merits of their appeal. They  
10 suggest that the Court needed to find them in contempt of the  
11 new injunction in order to impose a receivership, and this is  
12 the crux of their argument on the merits, Your Honor. There's  
13 simply no legal authority requiring that a remedy for  
14 constitutional violations at a jail needs to be tailored to a  
15 particular order issued by the Court, and the PLRA doesn't  
16 focus on the number of court-ordered provisions not yet in  
17 compliance or whether there's partial compliance on any of  
18 them.

19           The remedy needs to be narrowly tailored to  
20 constitutional violations, and it is. The record in this case  
21 is clear. The Court already conducted the required legal  
22 analysis when it applied the *Plata* receivership factors and  
23 concluded that a receiver is necessary to correct ongoing  
24 constitutional violations at RDC. And that's, of course --  
25 that analysis was in the order that's at ECF No. 204, and the

1 receiver orders themselves are tailored to the problems here  
2 and how the receiver will remedy them and bring RDC into  
3 constitutional compliance, as the defendants have failed to do  
4 despite many years of court oversight and various attempts at  
5 compliance that do not rise to the level of a receivership.

6         The procedural history of this case demonstrates that  
7 the Court imposed the receivership to remedy unconstitutional  
8 conditions at RDC. The Court found the defendants in contempt  
9 of the consent decree and stipulated order and found that  
10 noncompliance contributed to the County's failure to meet  
11 constitutional standards. The new injunction requires the  
12 defendants to remedy unconstitutional conditions by addressing  
13 their failure to come into substantial compliance with the  
14 decree provisions that the Court retained. Defendants also  
15 seem to acknowledge that RDC is not in constitutional  
16 compliance. It has never been a priority to get it there  
17 despite the consent decree, the assistance of the monitoring  
18 team, and many chances from the Court to get on the right  
19 track.

20         As the Court has found based on the entire record,  
21 including an evidentiary hearing as recently as July, the 17th  
22 monitoring report, and other recent evidence from the past  
23 several months, the same old story persists at RDC warranting  
24 receivership to remedy the constitutional violations. There's  
25 still dire custody staffing issues. Supervision is inadequate

1 to protect the population from risk of harm from violence and  
2 gang activity in the pods. The physical plant is in  
3 disrepair. Things get broken and destroyed because there's no  
4 sufficient -- there's not sufficient supervision. Mental  
5 health care is inadequate. It continues to be an issue that  
6 has just not been addressed as the County has promised over  
7 and over again. Individuals with serious mental health needs  
8 are at risk of harm due to inadequate care and failure to  
9 properly conduct wellness checks.

10 Based on the record, the Court found that a receiver is  
11 in the best position to right the ship at RDC, and the Court  
12 properly found the receiver is necessary to bring RDC up to  
13 constitutional standards and protect detainees.

14 There's the defendants' argument that these findings  
15 and conclusions were based on the 2016 consent decree are not  
16 supported by the law or the facts. There's no requirement  
17 that a receiver be imposed as a sanction for the most recent  
18 operative order on the docket. The legal requirement is tied  
19 to constitutional compliance and what remedy is going to be  
20 appropriate to get the defendants there. So the Court's  
21 analysis of the factors from *Plata*, which is the seminal case  
22 on correctional receiverships, was appropriate.

23 A word about the defendants' argument that a  
24 receivership is a serious remedy. Yes, the Court recognized  
25 that. The United States recognizes that. But the Court found



1 that receivership was necessary here because the record shows  
2 that other lesser -- less intrusive means did not remedy the  
3 constitutional violations. And given the scope of the  
4 receiver orders and the pared-down injunction, the Court found  
5 that the remedy that was imposed would allow for a focus on  
6 the most egregious harms and help the County reach compliance  
7 finally and then return RDC to the County's management with  
8 improvements in place.

9       You know, defendants seem to argue that receiverships  
10 are simply never appropriate, that they cannot be imposed.  
11 They haven't exactly said that, but reading their briefs and  
12 listening to their arguments, that's what you would think they  
13 were saying, and the Court asked a question along those lines.  
14 The Court's order includes an explanation of why a  
15 receivership is necessary here, why less intrusive means of  
16 addressing violations have failed, and cites authority  
17 explaining that a receivership can be appropriate, and it's  
18 warranted here.

19       Regarding irreparable harm, the second factor for a  
20 stay, the defendants have not established that they will be  
21 irreparably harmed if the receiver begins work. First, money  
22 spent on the receivership will not be wasted. There's no  
23 plausible argument that conditions at RDC are constitutional.  
24 It's almost certain that without the receiver, those  
25 unconstitutional conditions will persist. The record shows

1 and the Court found County is not making adequate progress  
2 addressing them, and so a receiver is necessary. And the  
3 Court therefore appointed a qualified candidate who has a  
4 track record and experience and expertise to bring the County  
5 into compliance; and the receiver, operating under the scope  
6 of the receivership order, will be able to make those  
7 improvements in ways the County has failed to do on its own.

8 The Court already explained in its analysis of the  
9 wasted resources factor that the cost that the receiver incurs  
10 will be money well spent and not wasted resources, that,  
11 rather, allowing the County to continue to flounder and fail  
12 to correct constitutional violations will continue to waste  
13 more resources.

14 And as -- the Court asked the defendants about this a  
15 little bit, but the defendants also exaggerate the financial  
16 harm and the -- you know, the harm that they argue will be  
17 caused simply by giving the receiver the authority. But the  
18 receiver orders have built-in safeguards permitting County  
19 input on budgets and other aspects of jail management. The  
20 order narrowly applies to RDC. It's a pared-down version of  
21 the older order. The new injunction is focused on the most  
22 egregious harms, and the order recognizes that there are  
23 aspects of County government that the receiver will still be  
24 subject to.

25 Regarding the third and fourth factors, injury to the

1 United States and the public interest. The defendants  
2 continue to argue that the United States can't be harmed by  
3 harm to detainees, but in fact the United States is enforcing  
4 a statute that is meant to protect the constitutional rights  
5 of detainees. So harms to the individuals who are detained at  
6 the jail are harm to the United States. And similarly, the  
7 receiver is in the public interest because of the serious  
8 ongoing harm at RDC, and that harm will be much worse if the  
9 receiver orders are stayed. The same dysfunction, wasted  
10 resources, and unconstitutional conditions will persist.

11 Additionally, Your Honor, the new injunction and the  
12 constitution are still in place regardless of whether the  
13 Court grants a stay of the receiver orders. The legal  
14 standard and the County's obligation to live up to it remains  
15 unchanged. The receiver orders simply allow the receiver to  
16 start work, which, as the Court has already found, will hasten  
17 progress in a way that it simply has been stymied up to this  
18 point.

19 I also want to point out that the defendants have been  
20 failing to provide the monitor the access that she requires  
21 and inhibiting her ability to evaluate conditions at the jail  
22 over the past several months. There have been a lot of  
23 challenges in her ability to obtain information. For example,  
24 it's our understanding that the defendants haven't provided  
25 any incident reports to the monitor for October of this year

1 and haven't provided all of the Prison Rape Elimination Act  
2 reports that she needs to make her assessments. And this  
3 continued failure to comport with the Court's orders harms the  
4 public interest and supports the need for a receiver to start  
5 work right away, because defendants have failed to keep up  
6 with reasonable access requirements. And the receiver is  
7 needed to reinstate that access.

8 The monitor is the Court's eyes and ears on current  
9 conditions, and so by hindering her ability to monitor  
10 compliance, the defendants have been impeding not only the  
11 United States' access but also the Court's access and public  
12 transparency.

13 One final point on receivership. You know, defendants  
14 argue that receivership is undemocratic and accuse the United  
15 States of supporting a remedy that's not democratic in nature,  
16 but while we recognize that receivership is a serious remedy,  
17 it's appropriate and lawful when warranted, as it is here. No  
18 lesser remedy appears capable of addressing the long-standing  
19 constitutional violations and harm.

20 The consent decree dates back to 2016. The stipulated  
21 order, which the defendants agreed to to resolve contempt  
22 proceedings, dates back to early 2020. The Court gave the  
23 defendants more time this year to come into constitutional  
24 compliance, and the Court has heard evidence throughout the  
25 year regarding the way that constitutional violations persist

1 at the jail and how very dangerous it is and the risk of harm  
2 that detainees face there every day.

3 The Court also considered a more drastic remedy than  
4 receivership, such as a prisoner release order or monetary  
5 sanctions, and rejected them in favor of the receivership that  
6 we are talking about today.

7 So for these reasons, Your Honor, a stay is not  
8 warranted here. We would argue that the receiver should be  
9 allowed to start work as soon as possible.

10 THE COURT: Okay. Let me ask the Government this  
11 question, and I may be recasting differently and -- I may be  
12 recasting the County's argument. And this may not be one of  
13 their arguments, so if it's not, they will correct me on  
14 the -- when they respond.

15 But basically there was -- on the motion to terminate  
16 the consent decree, the Court found, I believe, that the  
17 consent decree itself was broader than what the constitution  
18 required, and the Court pared that down and entered a new sort  
19 of -- new parameters, if you will, modified the -- reduced it  
20 by several paragraphs, took out a lot of things as the County  
21 argued.

22 So even if -- and this may be where I'm recasting the  
23 County's argument. Even if they were out of compliance with  
24 what the Court looked at then, it was this whole injunction  
25 that the Court has now since modified, and basically the

1 County says, well, we should be given an opportunity, if you  
2 will, to breach our obligations under the existing injunction  
3 before this court takes any additional relief. If that's not  
4 the County's argument, that's fine. That's my question.  
5 Should the Court sort of separate or compartmentalize and say,  
6 well, the consent decree that was entered and the stipulated  
7 order, we had all that was before us on that day. We found  
8 some things, the Court made findings that certain situations  
9 were current and ongoing, and now we have something in place  
10 to track that. And there is something in place. There is an  
11 injunction that is currently in place.

12 And to the extent that the -- I don't know what the  
13 next monitor's report is going to show or going to say about  
14 whether the County is in partial compliance, substantial  
15 compliance, not in compliance at all. I don't know what  
16 number of assaults we've had in the last several months  
17 because we've had no updates. I don't know what number of  
18 escapes we've had, and certainly we've had some because as a  
19 matter of public record and judicial notice, we know that  
20 there was -- we know there were press conferences and stuff in  
21 the local media about at least one escape.

22 So if there are any deficiencies existing now,  
23 shouldn't this whole process begin anew and we sort of, I  
24 guess, litigate or figure out how any -- if there are any  
25 failures of the County that justify, I guess, contempt

1 citations and then the appointment of a receiver? Should the  
2 Court be looking at it in that way if the County is arguing  
3 that, Ms. Vera?

4 MS. VERA: No, Your Honor. The County has demonstrated  
5 repeatedly that giving them additional chances to come into  
6 constitutional compliance doesn't work. You know, one of  
7 defendants' arguments is that the consent decree -- that the  
8 County never managed to comply with the consent decree and  
9 that's somehow an argument against installing a receiver. But  
10 the problem here is that the County has never been able to  
11 come into compliance. It wasn't able to come into compliance  
12 with the consent decree. It wasn't able to come into  
13 compliance with the stipulated order. Defendants asked the  
14 Court for more time about a year ago. The Court gave them  
15 more time. They didn't come into compliance then.

16 The Court held an evidentiary hearing early this year.  
17 The Court continued to evaluate the record over the course of  
18 the past year, and giving the County more time to remedy the  
19 constitutional violations at Raymond does not work. The  
20 violations have persisted, and the detainees continue to be at  
21 unreasonable risk of harm.

22 And the main issue is that failure to comply with  
23 constitutional standards, the failure to get RDC into  
24 constitutional compliance, and that's why the Court decided a  
25 receiver was necessary to remedy those conditions. And so,

1     you know, giving the County a chance to come into compliance  
2     with the new injunction would just be continuing that pattern  
3     and leaving the detainees at the jail in a continued risk of  
4     serious harm.

5             You know, the defendants' main argument that the new  
6     injunction is the operative order now is somewhat -- it's a  
7     point that's sort of to the side of the main issue, which is  
8     whether the remedy is tailored to address constitutional  
9     violations, which it is, but it's also the case that the new  
10    injunction is -- it includes the provisions of the previous  
11    consent decree that they were already found in contempt of.  
12    So we're not really talking about anything new here, Your  
13    Honor.

14            THE COURT:   Okay.   Thank you, Ms. Vera.   Anything  
15    additional?   Well, let me ask you this, Ms. Vera:   What does  
16    the United States say with respect to the order setting forth  
17    the duties and responsibilities and obligations of the  
18    receiver?   Are there any -- well, I think the County said if  
19    there are any modifications, probably can't be done now  
20    because there is an appeal.   But any concerns that the United  
21    States has with the duties and responsibilities that the Court  
22    outlined for the receiver?

23            MS. VERA:   No, Your Honor.

24            THE COURT:   Okay.   All right.

25            MS. VERA:   The Court heard our motion for



1 clarification, but nothing on the substantive provisions, Your  
2 Honor.

3 THE COURT: Okay. All right. Thank you.

4 Mr. Shelson?

5 MR. SHELSON: Yes, Your Honor. Thank you. May I  
6 proceed?

7 THE COURT: You may.

8 MR. SHELSON: Thank you, Your Honor. To be clear, Your  
9 Honor, the motion to stay we're here about today is the  
10 County's second motion to stay. The County's first motion to  
11 stay, which the Court denied, was regarding -- the issue there  
12 was whether the County was likely to prevail on the underlying  
13 merits.

14 What the United States is doing here in its argument is  
15 confusing the underlying merits, which it keeps referring to  
16 as the underlying constitutional violations, with the merits  
17 of the remedy. What the Court's focus should be on with  
18 respect to the motion to stay before the Court today is the  
19 merits of the remedy, and so to the extent that the United  
20 States, which is near total, is arguing about the underlying  
21 merits, they're arguing the wrong merits issue.

22 Clearly, Your Honor, not everything in the consent  
23 decree even came close to arising to a constitutional  
24 violation, and that's not the County talking, Your Honor.  
25 That was a finding that this court made. The United States

1 argued that the receiver remedy is narrowly tailored to the  
2 constitutional violations. What constitutional violations?  
3 Your Honor, that's the problem in a nutshell.

4 The United States is dismissive of the fact that the  
5 consent decree is no longer the operative order, and for  
6 whatever reason the United States just can't seem to say that  
7 the consent decree is no longer the controlling order. It's  
8 gone, and that is a reality. The County doesn't know what  
9 else to say about that.

10 United States also said that the receivership orders,  
11 in addition to addressing the constitutional violations,  
12 addresses the violation of the consent decree that the Court  
13 found the County in contempt of. Well, Your Honor, that's  
14 what the Court said it did. It said it is imposing a  
15 receivership as the final sanction for the two contempt  
16 orders. Contempt of what? Not contempt of the new  
17 injunction. Contempt of the consent decree. That is  
18 absolutely clear.

19 The United States' next point is that it stated as a  
20 conclusion that the receivership will work. To this day, no  
21 evidence has been presented by the United States that that  
22 will happen.

23 United States said that the County seems to concede  
24 constitutional violations. The County has never conceded  
25 that. Your Honor, there's not -- let's bring it to just this

1 motion. There's nothing in the County's motion, its opening  
2 brief, or its rebuttal brief that concedes constitutional  
3 violations.

4 United States suggested that RDC has never been a  
5 priority to the County. We addressed this somewhat in our  
6 opening brief regarding the motion to stay and previously,  
7 frankly. I guess we just have an honest difference of opinion  
8 on that with the United States, because in a nutshell, Your  
9 Honor, as the Court knows, any matter regarding RDC that came  
10 to this board received unanimous approval, and the County's  
11 position is that absolutely has been a priority.

12 United States identified *Plata* as the seminal case. We  
13 think that's an overcharacterization of *Plata*. It's a Ninth  
14 Circuit case. The Fifth Circuit certainly never adopted  
15 *Plata*. The reason -- the truth is, Your Honor, *Plata* is one  
16 of the only cases that discuss receivership orders because  
17 it's such a rare and extreme remedy.

18 United States mentioned that the new injunction is a  
19 pared-down order so the County could focus on the essentials.  
20 That's part of our point, Your Honor, that the United States  
21 dismisses. Between the entry of the new injunction and when  
22 the Court decided or announced it was going to appoint a  
23 receiver, only 107 days lapsed. The new injunction had never  
24 really been tried, Your Honor.

25 United States recognizes -- or said that the County

1 didn't exactly say it but the County seemed nevertheless to  
2 say that a receivership is never appropriate. The County said  
3 no such thing, Your Honor.

4 United States said the County did not establish  
5 irreparable harm. Ms. Vera said that money spent on a  
6 receiver would be well spent. That's just argument of  
7 counsel, Your Honor. There's no evidence in the record that  
8 supports that.

9 Ms. Vera said that defendants exaggerate the financial  
10 harm. The truth is she doesn't know that. She doesn't know  
11 that. We haven't seen the receiver's budget. There's just no  
12 basis in the record for that conclusion. The budget given the  
13 other -- the County's other legitimate obligations could be  
14 ruinous. We haven't seen it yet, so I admit I don't know  
15 either, but certainly neither does the United States.

16 One thing Ms. Vera said that we agree with is that the  
17 order narrowly applies to RDC. To relate back to a point  
18 earlier in the discussion today, Your Honor, the RDC certainly  
19 does not -- excuse me, the receiver order certainly does not  
20 mention Henley-Young by name.

21 Your Honor, the point -- *Plata* 's point that  
22 receivership orders are debilitation of democracy is not  
23 something the County is making up. They are. In this case  
24 the elected officials, the board of supervisors and the  
25 sheriff, have no say. They have no substantive say going

1 forward regarding the operation of a local jail. Your Honor,  
2 this is ECF 232, the United States' memorandum in support of  
3 its opposition of the motion to stay. It's page 16, note 11  
4 talking about the receiver orders. The United States wrote,  
5 This is a temporary transfer of powers, not the permanent  
6 replacement of local officials.

7 Again, Your Honor, that's debilitation of democracy in  
8 a nutshell with respect to this order. A temporary transfer  
9 of powers. The United States doesn't define temporary, and  
10 they don't know the duration of this transfer of power, which  
11 is complete, and the United States said it's not the permanent  
12 replacement of local officials. Your Honor, it's the  
13 permanent replacement of local officials till the Court does  
14 away with the order. It's the permanent replacement of local  
15 officials until the Court says otherwise. That's irreparable  
16 the harm from the County's perspective and, we think,  
17 objectively.

18 I don't want to belabor this point, Your Honor, because  
19 I really don't think it has to do with why we're here, but it  
20 was mentioned and we, frankly, think it was somewhat  
21 gratuitous. Failing to grant the monitor access. We have a  
22 serious dispute about that if what the United States is  
23 referring to is this most recent monitoring visit, Your Honor,  
24 and to the extent they're talking about documents, which they  
25 seem to be, the shortest version of it, Your Honor, is this:

1 For the last site visit, the monitors submitted 60 separate  
2 document requests, and they all virtually had different time  
3 parameters on them.

4 The County disputes that it did not make a good faith  
5 effort to honor those requests. Lawyers in this room were  
6 personally involved in that, and frankly, Your Honor, the  
7 County's production we think was state of the art. They were  
8 Bates numbered. And those 60 separate requests, Your Honor,  
9 the documents were placed in folders that matched the request.  
10 So there were separate folders for each request. I don't know  
11 how we could have made it easier, and I don't know why it was  
12 perceived as not working, but I'll move on.

13 To the point where -- that Ms. Vera finished with that  
14 the defendants allege that receiverships are undemocratic,  
15 I've spoken to that already, Your Honor, so I won't belabor  
16 it. It's not a mere allegation. It's a fact. They're  
17 undemocratic. When you kick out the board of supervisors and  
18 the sheriff from any substantive involvement with the local  
19 jail, from the actual operation, Your Honor, that is  
20 undemocratic, the County respectfully submits.

21 So subject to any questions Your Honor has, that  
22 concludes the County's argument, Your Honor.

23 THE COURT: All right. I realize that the Court has  
24 not been informed because, again, we've not had any status  
25 updates in a while, but I think the Court's -- I think it is

1 obvious to the parties that the Court entered -- and I know  
2 the notice for citation of contempt, the first one that the  
3 Court -- the show cause order that the Court issued a year  
4 ago -- a year ago tomorrow, I think. It was the night of the  
5 runoff election. It was at the hour that the polls closed,  
6 and the parties can look at stamped, filed, docket of that.

7 And for the record, if it has not been said, the Court  
8 did not want to interfere with the election, so the Court  
9 waited until the polls closed. 7:01 p.m. it entered its  
10 notice.

11 Now, whether it was prepared prior to 7:00, it may have  
12 been. But this court did not want to be accused of filing a  
13 citation of contempt in the middle of a runoff election where  
14 the detention center and the jail was a hotly contested part  
15 of the whole political thing, because that was part of the  
16 hearing. That has been part of the Court's finding.

17 But at the moment that the Court issued its show cause  
18 here -- and I realize I don't think there have been any more  
19 deaths, but one of the opening things that the Court mentioned  
20 was the number of deaths that had occurred at the facility.  
21 Thankfully, I don't believe there have been any more deaths.  
22 I don't think there have been. Again, I've not been -- we've  
23 not had any status updates.

24 But just because there have not been any deaths does  
25 not mean -- I mean, you know, if the Court waited for five

1 deaths or four deaths to have occurred before entering the  
2 show cause -- or the show cause order, I guess shame on the  
3 Court, and the Court could have or maybe even should have done  
4 something to protect the detainees from the action or inaction  
5 of those persons who were democratically elected to provide  
6 for them.

7           And I hear you now. I hear the County now saying that  
8 it disrupts federalism, it disrupts the political process,  
9 it's invasive, it's evasive, it's whatever. But the rules  
10 allow for the appointment of a receiver, and whether we've met  
11 the need of it now -- I mean, the rules itself allow for the  
12 appointment of a receiver. The law itself allows for the  
13 appointment of a receiver. And whether the Court -- whether  
14 there are circumstances in this case that justify it, the  
15 appointment, the Court has found that there was a need to do  
16 it.

17           So now the question before the Court is whether it  
18 should stay that particular finding. And I hear the County,  
19 and I hear the United States. I have -- I think I have all  
20 the issues before me. And I do note that footnote that the  
21 County pointed me to, footnote 11, but I'm also cognizant of  
22 footnote 7 in the United States' Docket 232 on the motion to  
23 stay where there's a mention of whether or not, you know, is  
24 the floor the fact that a death has not occurred?

25           So I have all the issues before me now. I will work



1 diligently to rule on these motions. I do acknowledge that  
2 the County has brought it to the Court as an urgent and  
3 necessitous matter, so we will attempt to rule without any  
4 undue delay.

5 And so I appreciate -- we set this matter for this  
6 afternoon because the Court was supposed to start a trial this  
7 morning. We were able to move it up an hour earlier because  
8 of circumstances in the other case. The trial won't begin  
9 until tomorrow. But we will work diligently to get you the  
10 orders on these pending motions.

11 Is there anything else that the Court needs to take up?

12 All right. Thank you all -- again, thank you for  
13 making yourselves available, and sorry you had to work maybe  
14 over the holiday like we did. But that's what we do. Thank  
15 you so much.

16 MR. SHELSON: Thank you, Your Honor.

17 THE COURT: The Court will enter an order in due  
18 course.

19 MS. VERA: Thank you, Your Honor.

20 MR. SHELSON: Thank you, Your Honor.

21 THE COURT: All right. We're now adjourned.

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**COURT REPORTER'S CERTIFICATE**

I, Candice S. Crane, Official Court Reporter for the United States District Court for the Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of the proceedings had in the forenamed case at the time and place indicated, which proceedings were stenographically recorded by me to the best of my skill and ability.

I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

THIS, the 19th day of December, 2022.

*/s/ Candice S. Crane, RPR, RCR*

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